## REMARKS

In response to the examiner's rejection of claims 1-4 and 11-14 as being anticipated by WO 02/23443 to Flynn ("Flynn"), the rejection of claims 5-6, 8, 15-16 and 18 as being obvious over Flynn in view of US Patent Application Publication No. 2003/0105689 to Chandak et al. ("Chandak"), the rejection of claims 7 and 17 as being obvious over Flynn and Chandak and further in view of US Patent Application Publication No. 2003/0225651 to Chen ("Chen") and the rejection of claims 10 and 20-23 as being obvious over Flynn in view of US Patent Application Publication No. 2004/0054553 to Zizzamia et al. ("Zizzamia"), Applicant traverses the rejections because, as set forth below, each claim element is not disclosed in Flynn and therefore Flynn does not anticipate the independent claims and the combination of Flynn and the other prior art do not teach or suggest each claim element and therefore the examiner has not established a prima facie case of obviousness for the reasons set forth below.

### Claims 1-4 and 11-14

The examiner has asserted these claims are anticipated by Flynn. However, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). *See also MPEP 2131 et seq.*

In this rejection, the anticipation rejection for each claim is improper because each claim element is not found in Flynn for the reasons set forth below.

### Flynn

Flynn discloses a method and apparatus for producing reduced risk loans (See Title) for a construction loan or trade loan. *See Flynn at pg. 11, lines 3-6.* To determine the risk of the loan, the system gleans data from the loan application and a financial & property/project questionnaire

and stores the information in character (Loan Applicant's reputation), financial (Loan Applicant's past and current financial data), property (real estate information used for construction loans), legal (contractual terms) and project risk assessment files (for a trade loan request.) *See Flynn at pg. 12, lines 7-18.* The Flynn system uses the above information in the risk assessment files to evaluate whether or not to give the particular contractor a construction loan or a trade loan. *See Flynn at pg. 13, lines 5-6.*

**Claim 1**

Claim 1 recites "said program collects historical contractor variables including one or more contractor structure variables, one or more size of contractor business variables, one or more contractor stability variables, one or more contractor engagement variables and one or more contractor performance variables, generates a score associated with each historical contractor variable" which are not found in Flynn. While Flynn may disclose that financial information, property information and legal information are collected for a loan risk evaluation, Flynn does not disclose that one or more contractor structure variables, one or more size of contractor business variables, one or more contractor stability variables, one or more contractor engagement variables and one or more contractor performance variables are collected. In addition, Flynn does not disclose that a score associated with each historical contractor variable is generated. Thus, these two claim elements in claim 1 are not found in Flynn.

Claim 1 also recites said program "comprises a formula that generates contactor risk assessment score calculated by combining the scores of the historical contractor variables wherein the contactor risk assessment score is predictive of whether a contractor is able to complete a construction job on time and on budget" which is also not found in Flynn. While Flynn discloses generating a loan risk assessment, Flynn does not "generate a contactor risk assessment score calculated by combining the scores of the historical contractor variables wherein the contactor risk assessment score is predictive of whether a contractor is able to complete a construction job on time and on budget." Thus, this claim element is also not found in Flynn.

Since several claim elements of claim 1 are not found in Flynn, the anticipation rejection of claim 1 must be withdrawn.

**Claim 11**

Claim 11 recites "collecting historical contractor variables including one or more contractor structure variables, one or more size of contractor business variables, one or more contractor stability variables, one or more contractor engagement variables and one or more contractor performance variables" and "generating a score associated with each historical contractor variable" which are not found in Flynn. While Flynn may disclose that financial information, property information and legal information are collected for a loan risk evaluation, Flynn does not disclose that one or more contractor structure variables, one or more size of contractor business variables, one or more contractor stability variables, one or more contractor engagement variables and one or more contractor performance variables are collected. In addition, Flynn does not disclose that a score associated with each historical contractor variable is generated. Thus, these two claim elements in claim 11 are not found in Flynn.

Claim 11 also recites "generating a contactor risk assessment score calculated by combining the scores of the historical contractor variables wherein the contactor risk assessment score is predictive of whether a contractor is able to complete a construction job on time and on budget" which is also not found in Flynn. While Flynn discloses generating a loan risk assessment, Flynn does not "generate a contactor risk assessment score calculated by combining the scores of the historical contractor variables wherein the contactor risk assessment score is predictive of whether a contractor is able to complete a construction job on time and on budget." Thus, this claim element is also not found in Flynn.

Since several claim elements of claim 11 are not found in Flynn, the anticipation rejection of claim 11 must be withdrawn.

**Claims 2-4 and 12-14**

These claims depend from claims 1 and 11 and the anticipation rejection of these claims must be withdrawn for the same reasons as claims 1 and 11.

Furthermore, claims 2 and 12 recite a particular formula for calculating the contractor risk assessment score which is not described in Flynn and the anticipation rejection of these claims must be withdrawn for at least this additional reason.

Claims 5-6, 8, 15-16 and 18

The examiner has rejected these claims as being obvious over Flynn in view of Chandak. Pursuant to MPEP § 2143, to establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, and the prior art reference must teach or suggest all the claim limitations. *See M.P.E.P. § 2143.* Also, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

For these claims, because Flynn does not disclose certain claim elements of the independent claims as set forth above from which these claims depend, the combination of Flynn and Chandak do not teach or suggest each claim element because Chandak does not cure the disclosure deficiencies of Flynn and therefore the examiner has not established a prima facie case of obviousness and the rejection must be withdrawn.

Claims 7 and 17

The examiner has rejected these claims as being obvious over Flynn and Chandak and further in view Chen. However, because Flynn does not disclose certain claim elements of the independent claims from which these claims depend, the combination of Flynn, Chandak and Chen do not teach or suggest each claim element because Chandak and Chen do not cure the disclosure deficiencies of Flynn and therefore the examiner has not established a prima facie case of obviousness and the rejection must be withdrawn.

Claims 10 and 20-23

The examiner has rejected these claims as being obvious over Flynn in view of Zizzamia. However, because Flynn does not disclose certain claim elements of the independent claims from which these claims depend, the combination of Flynn and Zizzamia do not teach or suggest each claim element because Zimmamia does not cure the disclosure deficiencies of Flynn and therefore the examiner has not established a prima facie case of obviousness and the rejection must be withdrawn.

## CONCLUSION

In view of the above, it is respectfully submitted that Claims 1-23 are allowable over the prior art cited by the Examiner and early allowance of these claims and the application is respectfully requested.

The Examiner is invited to call Applicant's attorney at the number below in order to speed the prosecution of this application.

The Commissioner is authorized to charge any deficiencies in fees and credit any overpayment of fees to Deposit Account No. 07-1896.

Respectfully submitted,

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